



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

OCT 20 2004

**FIRST CLASS MAIL**

Joseph Sandler, Esq.  
Sandler, Reiff & Young, P.C.  
50 E Street, SE  
Suite 300  
Washington, DC 20003

RE:

MoveOn.org Voter Fund  
MoveOn PAC, and Wesley Boyd, as  
Treasurer

Dear Mr. Sandler:

On April 7, 2004, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at this time.

Upon further review of the allegations contained in the complaint, the Commission, on September 28, 2004, found that there is reason to believe that MoveOn.org Voter Fund, MoveOn PAC, and Wesley Boyd, as Treasurer, violated 2 U.S.C. §§ 434, 441a(f), 441b(a) and 11 C.F.R. §§ 102.5, 104.10, 106.1 and 106.6, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Please note that respondents have an obligation to preserve all documents, records and materials relating to the Commission's investigation.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with your responses to the enclosed subpoena and written questions within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

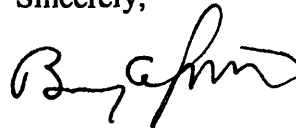
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact April J. Sands, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT:     MoveOn PAC and  
                      Wes Boyd, as Treasurer  
                      MoveOn.org Voter Fund

**I.     INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission (“the Commission”) by Bush-Cheney ’04, Inc. *See* 2 U.S.C. § 437g(a)(1). The complaint alleges that MoveOn.org Voter Fund (“MOVF”) is violating federal campaign finance laws by spending millions of dollars, raised outside the limitations and prohibitions of the Federal Election Campaign Act of 1971, amended (“the Act”), to influence the upcoming presidential election.

MOVF argues in response to the complaint that, as a matter of law, its activities do not result in violations of the Act. Generally, MOVF asserts that it is not a political committee and, therefore, not subject to the limitations and prohibitions of the Act and “that there has been no contribution or expenditure by [MOVF] within the meaning of the Act.” Resp. of MOVF at 1. MOVF also contends that Advisory Opinion 2003-37 (“the ABC AO”), which is cited in the complaint, does not apply to MOVF’s activities. Resp. of MOVF at 4.

MOVF appears to be a nonconnected political committee with federal and nonfederal accounts, as described in 11 C.F.R. § 102.5. The federal account of this committee, MoveOn PAC and Wes Boyd as Treasurer, is registered with the Commission and regularly files disclosure reports.<sup>1</sup> MOVF must comply with the Act’s contribution limitations, source

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<sup>1</sup> MOVF registered with the Commission on July 29, 2003.

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prohibitions, and reporting requirements, but it also must comply with applicable statutory and regulatory provisions as interpreted in AO 2003-37, which addresses the application of the Act and regulations to various campaign activities of a registered political committee.

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. FACTS**

MoveOn PAC is a political committee registered with the Commission and MoveOn.org Voter Fund ("MOVF") is a 527 organization that files reports with the IRS.<sup>2</sup> MoveOn.org is an entity organized under Section 501(c)(4) of the tax code.

MOVF, which is not registered as a political committee, ran a television advertising campaign in 67 media markets in 17 so-called "battleground states," beginning in March 2004. All of these ads constitute public communications that attack or oppose a clearly identified federal candidate—President Bush—and must be funded from federal funds. According to publicly available information:

- In Florida, Maine, Minnesota, and Nevada, MOVF has run its "Child's Pay" ad which criticizes President Bush for the budget deficit.
- In most states, the MOVF ad has focused on jobs issues, including overtime pay and outsourcing, and the economic insecurity purportedly felt by many working families. The MOVF ad program criticizes President Bush for his policies related to these issues.

Just like the registered political committee and non-federal account whose activities were addressed in the ABC AO, the activity at issue in this MUR is conducted by MoveOn PAC and MOVF which, while nominally separate, appear to operate as federal and nonfederal accounts of a single committee that has established both types of accounts pursuant to 11 C.F.R. § 102.5.

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<sup>2</sup> In its filing with the IRS, MOVF asserts that its purpose is "[t]o educate voters on the positions, records, views, and qualifications of candidates for public office and to stimulate interest in voting."

MOVF admits on its website and in its response that it is running and paying for television advertisements. MOVF Response at 7.

## B. ANALYSIS

In the ABC AO, the Commission analyzed numerous proposed activities by a political committee with federal and nonfederal accounts, including solicitations and communications referring to a clearly identified federal candidate, voter identification and registration activities, get-out-the-vote (“GOTV”) activities, and fundraising. The Commission determined that many of these activities were covered by the allocation regulations in 11 C.F.R. Part 106, and as for other activities not specifically covered by Part 106, the Commission identified the appropriate allocation ratio called for by the Act, as clarified by the recent ruling in *McConnell v. FEC*, 540 U.S. 93 (2003). AO 2003-37 at 2. Specifically, the Commission concluded that:

- Communications by a registered political committee, including fundraising communications, that promote, support, attack, or oppose (“PASO”) a clearly identified federal candidate are “expenditures” that must be paid for with federal funds;
- Communications by a registered political committee for voter mobilization activities, even if they are not coordinated with a candidate and do not refer to any clearly identified federal candidate, must be funded at least partially with federal funds;<sup>3</sup>
- Funds received by a registered political committee from solicitations that promote, support, attack, or oppose federal candidates and “convey a plan” to promote, support, attack, or oppose federal candidates are treated as contributions; and

<sup>3</sup> The term “voter mobilization activity” refers generally to voter identification, voter registration, and GOTV activities. See 11 C.F.R. § 106.6(b)(2)(iii). The expenses for voter mobilization activity must be allocated between the federal and nonfederal accounts of the committee based on the ratio of federal expenditures to total federal and nonfederal disbursements made by the committee during the two-year federal election cycle. AO 2003-37 at 4 (citing 11 C.F.R. § 106.6(c)). Communications made by a political committee for voter mobilization activities that refer to more than one clearly identified federal candidate—or to federal candidates and nonfederal candidates (or the entire ticket)—must be allocated to each such candidate according to the benefit reasonably expected to be derived. AO 2003-37 at 3 (citing 11 C.F.R. § 106.1).

- Voter registration efforts of a registered political committee that target particular groups of voters must either be allocated or paid from federal funds.

*See* AO 2003-37 at 2-4, 9-10, 13, 15, and 20.

Because the advertisements discussed above are public communications that promote, support, attack, or oppose a clearly identified federal candidate, they must be paid for with federal funds. AO 2003-37 at 9. Not only did MOVF pay for the advertisements with nonfederal funds, but it reported the payments to the Commission as electioneering communications. However, because MoveOn PAC and MOVF appear to operate as federal and nonfederal accounts of a single committee, any communication either one of them might make that would otherwise qualify as an electioneering communication (and that promotes, supports, attacks, or opposes a clearly identified federal candidate) is an expenditure, not an electioneering communication. 11 C.F.R. § 100.29(c)(3).

The ads should have been paid for by MoveOn PAC, not MOVF, and should not have been reported as electioneering communications. MoveOn PAC and Wes Boyd as Treasurer and MOVF paid for the advertisements using nonfederal funds, and thus appear to have improperly used nonfederal funds for the purpose of influencing a federal election. As a result, there is reason to believe that MoveOn PAC and Wesley Boyd, as Treasurer, and MoveOn.org Voter Fund has financed some of its activities using nonfederal funds when those activities were required to be funded with at least some federal funds.

### **III. CONCLUSION**

The Commission finds reason to believe that MoveOn PAC and Wes Boyd, as Treasurer, and MOVF violated 2 U.S.C. §§ 434, 441a(f), 441b(a) and 11 C.F.R. §§ 102.5, 104.10, 106.1 and 106.6.

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